

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
FAYETTEVILLE DIVISION

IN RE:

CASE NO.

PREFERRED ALTERNATIVES, INC.

05-03960-8-ATS

DEBTOR

ORDER DENYING MOTION TO AUTHORIZE PAYMENT
OF PREPETITION PAYROLL

The matter before the court is the debtor's motion to authorize payment of prepetition payroll. A hearing took place in Raleigh, North Carolina on September 22, 2005.

Preferred Alternatives, Inc. and Preferred Alternatives of Tennessee, Inc. filed petitions for relief under chapter 11 of the Bankruptcy Code on May 16, 2005, and the cases have been administratively consolidated. On August 3, 2005, the debtor filed the instant motion to authorize payments of prepetition payroll made on May 20, 2005, May 27, 2005, and June 3, 2005. The debtor contends that these payments would have been fully entitled to priority under 11 U.S.C. § 507(a)(3) and that most of the 900 employees would have left the companies had the payroll not been made. The departure of the employees would have, in turn, been financially and practically devastating to the debtor. The debtor also contends that there is little chance of administrative insolvency in this case, and all of

these employee claims would be paid through a chapter 11 plan or in the event of a liquidation.

The bankruptcy administrator objected to the motion on two grounds: first, the debtor's failure to seek authorization of the payments before it made them as required by Local Bankruptcy Rule 4002-1(b)(3)(B), instead seeking the forgiveness of the court rather than its permission; and second, the debtor's failure to demonstrate that the payments were necessary.

The court agrees that the debtor should have sought approval of the payments prior to making them. Accordingly, the motion will be denied; however, the debtor need not seek reimbursement from its employees at this time.

Based on the foregoing, the debtor's motion to authorize payment of prepetition payroll is **DENIED**.

SO ORDERED.

DATED: September 22, 2005


A. Thomas Small
United States Bankruptcy Judge